

**IN THE COURT OF APPEALS OF THE STATE OF ALASKA**

ALASKA DENTAL ARTS, LLC

Petitioner,

vs.

SUPERIOR COURT,

Respondent.

Court of Appeals No. A-13816

Trial Court Nos. 3AN-17-02990CR/3AN-17-02991CR/3AN-17-02992CR

**THE STATE OF ALASKA,  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES'  
RESPONSE TO SETH LOOKHART'S  
RESPONSE TO ORIGINAL APPLICATION**

**I. INTRODUCTION**

Seth Lookhart's request for a stay of the order disposing of frozen money pending the outcome of his appeal should be denied because Lookhart has no interest in the frozen money due to an unrelated and preexisting debt owed to Columbia Bank ("Bank"). Similarly, Lookhart's alternative argument that the trial court lacked the authority to dispose of the frozen money should also be rejected because Lookhart does not have standing to challenge that order because he does not have an interest in the frozen money.

The flaw in Lookhart's request for a stay regarding a decision on the frozen money and his alternative request for this court to hold the trial court lacked the authority to dispose of the frozen money is it ignores the Bank's civil judgment against

Lookhart. The Bank's civil judgment against Lookhart is based on an unrelated loan default that predates the convictions Lookhart is currently appealing.

Prior to Lookhart defaulting on his loan and the Bank obtaining a civil judgment, the money in dispute was frozen by a search warrant issued in conjunction with an investigation into Medicaid fraud. Following Lookhart's conviction, the trial court found that the frozen money should go not to the Bank, but to the State of Alaska, Department of Health and Social Services ("DHSS") which operates the Alaska Medicaid program. It presumably did so for two related reasons. First, the money was frozen because it was suspected of being stolen from Medicaid and Lookhart has now been convicted of stealing from Medicaid. Secondly, the money was frozen before Lookhart defaulted on his loan and before the Bank's civil judgment against Lookhart.

The Bank disagreed that the money being frozen prior to Lookhart defaulting on his loan with the Bank gave DHSS a right to the frozen money ahead of the Bank's civil judgment against Lookhart. DHSS and the Bank have resolved their dispute over who between them has priority to the frozen money. Because DHSS and the Bank have resolved their dispute, the Bank withdrew its motion for reconsideration of the trial court's order releasing the money to DHSS and has not participated in the current appeal.

Despite the Bank no longer arguing the trial court erred in finding the funds should be released to DHSS and not the Bank, Lookhart still owes the Bank for defaulting on its loan. That means even if Lookhart succeeded on his appeal and his

convictions were overturned, the frozen money would go to the Bank and not Lookhart. It also means even if the trial court erred in finding the frozen money should go to DHSS upon his conviction, the frozen money would likewise go to the Bank and not Lookhart.

Because DHSS and the Bank have settled their dispute and the Bank is not challenging the trial court's order, there is no basis for staying the trial court's order or finding the trial court erred in disposing of the funds in favor of DHSS.

## **II. ARGUMENT**

### **A. Lookhart has offered no legitimate reason for staying a decision on whether the trial court erred in disposing of the funds in favor of DHSS.**

Lookhart's argument that Alaska Dental Art's ("ADA") application for relief is not ripe simply because he is appealing his conviction is not supported by law. Alaska R. App. P. 206 governs stays of execution of a sentence pending an appeal. Although restitution is not explicitly addressed in Alaska R. App. P. 206, subsections (a)(2) pertaining to fines and (a)(4) pertaining to other terms of a sentence grant the court discretion in regards to whether a stay is appropriate.

Lookhart has offered no legitimate grounds for staying a decision on ADA's application for relief. ADA's application for relief pertains only to the money frozen by the search warrant. It may be true that if Lookhart prevails on his appeal and his conviction is overturned, he will not owe DHSS or ADA restitution. But, that would not result in Lookhart being entitled to the frozen money. The frozen money would go

directly to the Bank to satisfy its judgment in 3AN-17-07103CI that found Lookhart owed the Bank \$1,984,187.57 as of October 23, 2017.<sup>1</sup>

**B. Lookhart has no standing to question whether the trial court had the authority to dispose of the frozen money because of the Bank’s civil judgment against him.**

Lookhart’s alternative argument that the trial court lacked the authority to dispose of the frozen funds need not be addressed because he has no standing to challenge that decision. Although whether Lookhart owes DHSS and ADA restitution for damages and how much is owed theoretically could change pending the outcome of his appeal, he still would not be entitled to the money that was frozen. In the unlikely event Lookhart’s convictions are overturned or scaled back, the frozen money would go to the Bank to help satisfy its preexisting and unrelated civil judgment against Lookhart.

Because there is no reasonably foreseeable scenario where Lookhart would be entitled to the frozen money – even if he were acquitted of all charged on appeal – he has no standing to challenge the trial court’s authority to dispose of the frozen money. To establish standing, Lookhart must demonstrate “a sufficient personal stake” in the outcome of the controversy.<sup>2</sup>

Lookhart has no stake in the controversy over whether the trial court had the authority to dispose of the frozen money. If, as Lookhart argues, the search warrant did

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<sup>1</sup> See Exhibit A, previously submitted as Exhibit D to DHSS’s June 14, 2021 Response to Alaska Dental Arts, LLC’s Application for Relief.

<sup>2</sup> *Keller v. French*, 205 P.3d 299, 304 (Alaska 2009) (quoting *Moore v. State* 553 P.2d 8, 23 (Alaska 1976)).

not authorize the seizure of the frozen money and therefore the trial court could not dispose of it, Lookhart still would not have an interest in it because the Bank obtained a civil judgment against Lookhart and had a right to use the frozen money to satisfy Lookhart's indebtedness to it.

### III. CONCLUSION

Lookhart's request for a stay of a decision on ADA's application for relief regarding the trial court's order disposing of frozen money pending his appeal should be denied because he will not be entitled to the frozen money even in the unlikely event his convictions are reversed. Similarly, there is no need for this court to consider whether Lookhart's argument that the trial court erred in disposing of the frozen money because there is no reasonably foreseeable scenario where Lookhart could receive the frozen money due to a preexisting and unrelated debt to the Bank. Lookhart has therefore not established standing to challenge the trial court's order disposing of the frozen money.

DATED: September 7, 2021.

TREG R. TAYLOR  
ATTORNEY GENERAL

By: /s/ Scott D. Friend  
Scott D. Friend  
Assistant Attorney General  
Alaska Bar No. 0605011